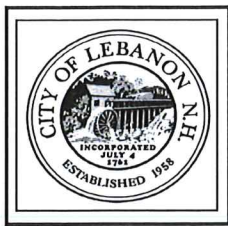


**AGENDA  
ZONING BOARD OF ADJUSTMENT  
JUNE 15, 2020**

**AGENDA ITEM #4A  
PUBLIC HEARINGS- NEW**

**ADAM & SHEENA  
YOUNGMAN  
8 ORA AVE.  
(Tax Map 90, Lot 4)  
zoned R-3  
#ZB2020-15-VAR**



## CITY OF LEBANON ~ PLANNING & DEVELOPMENT

### ZONING BOARD OF ADJUSTMENT

June 15, 2020 Special Meeting

Staff Memorandum – #ZB2020-15-VAR

#### **APPLICATION INFORMATION**

**Agenda Item:** 4.A

**Application Type:** Variance from §310.3 to allow a proposed shed to be constructed within the minimum side yard

**Location:**

8 Ora Ave (Tax Map 90, Lot 4)

**Applicant/Property Owner:**

Adam & Sheena Youngman

**Zoning District:** Residential Three (R-3)

**Property Size:** +/-0.23 acres (+/- 10,019 sq. ft.) (per the City Assessor's records; property is conforming to the min. required 10,000 sq. ft. lot size in the R-3 District per §310.3)

**Overlay Districts:**

None

**Previous ZBA Action (since 1995):**

None

**Other Approvals Required:**

- Building Permit

**Attachments:**

- Application (5 pages total)

#### **HEARING NOTICE**

**ADAM & SHEENA YOUNGMAN, 8 ORA AVE (Tax Map 90, Lot 4), zoned R-3:** Applicant requests a Variance from Article III, Section 310.3 of the Zoning Ordinance to construct a 12 'X 20' shed to be located +/- 8 ft. from the side lot line, where a minimum side yard of 15 ft. is required. #ZB2020-15-VAR

#### **BACKGROUND**

The property is improved with a one-family dwelling constructed in 1935 per the City Assessor's records, and is conforming to the R-3 District minimum lot size requirement. It appears the home itself is non-conforming to the minimum required front yard of 20 ft., and to the minimum 15 ft. side yard required from the lot line shared with 14 Union Street (the abutting lot to the south). Currently, there is no garage located on the property, nor are there any detached storage sheds.

#### **PROPOSAL**

The applicant proposes to construct a detached 12 ft. by 20 ft. shed to be located +/-8 ft. from the side lot line shared with 12 Ora Avenue (Tax Map 90, Lot 5) (and at least 20 ft. from the rear lot line which is the minimum required rear yard in the R-3 District). Because the shed will be constructed within the minimum required 15 ft. side yard, a Variance is required.

#### **ZONING ORDINANCE REQUIREMENTS**

A minimum side yard of 15 feet is required for Class 1 lots in the R-3 District per Section 309.3 of the Zoning Ordinance. Therefore, a Variance is required to permit construction of the proposed shed, which will be located approximately 8 feet from the side lot line shared with 12 Ora Avenue.

To obtain the requested Variance from Section 309.3, the applicant must demonstrate compliance with each of the five variance criteria as set forth in Section 801.2 of the Zoning Ordinance and NH RSA 674:33, I(b). The five criteria are set forth in the bold text below, followed by general staff commentary on the meaning and intent of each.

**STAFF MEMORANDUM**

#ZB2020-15-VAR

8 Ora Ave (Tax Map 90, Lot 4)

June 15, 2020 ZBA Meeting

Agenda Item 4.A

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**Figure 1. Street View of Subject Property.**



©2020 Google, <https://lebanonnh.mapgeo.io/> Image date: July 2013

**Figure 2. Bird's Eye View of Subject Property (looking north).**



©2018 Eagleview (image taken 5/2/2018)

1. **Will the variance be contrary to the public interest?** According to the Board of Adjustment in NH, 2012 Edition, for a variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?
2. **Will the spirit of the ordinance be observed?** According to the Board of Adjustment in NH, 2012 Edition, in deciding whether or not a variance will violate the spirit and intent of the ordinance, the Board must determine the legal purpose the ordinance serves and the reason it was enacted. The effect of the variance should be evaluated in light of the goals of the Ordinance, which might begin or end with a review of the master plan upon which the ordinance is based.
3. **Is substantial justice done?** According to the Board of Adjustment in NH, 2012 Edition, Board members must determine each case individually. They suggest that perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.
4. **Are values of surrounding properties diminished?** According to the Board of Adjustment in NH, 2012 Edition, if there is conflicting evidence (dueling experts) then it is the Board's job to sift through such testimony and other evidence to make a finding as to whether there will be a decrease in property values. Board members may also draw upon their own knowledge of the area in reaching a decision on this standard. It is the applicant's burden to convince the Board that it is more likely than not that the project will not decrease values.
5. **Would literal enforcement of the provisions of the ordinance result in an unnecessary hardship?**
  - a. **Special Conditions:** According to the Board of Adjustment in NH, 2012 Edition, Zoning imposes some hardship on all property owners by setting lot dimensions, allowable uses and other restrictions. Typically the restrictions on one parcel are balanced by similar restrictions on other parcels in the same zone. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed. Even within the same community, different results may be reached with just slightly different fact patterns.
  - b. **Fair and Substantial Relationship:** Part of this standard includes whether or not a fair and substantial relationship exists between the general public purpose of the ordinance provisions and the specific application of that provision to the property. Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? Once the purpose of the provision has been established, the property owner needs to establish that, because of the special conditions of the property, application of the ordinance provision to their property would not advance the purposes of the ordinance provision in any "fair and substantial" way.
  - c. **Reasonable Use: Is the proposed use a reasonable one?** All applicants believe their proposed use is a reasonable one. The applicant must establish that, in light of the special conditions of the property, as identified above, the proposed use is a reasonable one.

**STAFF MEMORANDUM**

#ZB2020-15-VAR

8 Ora Ave (Tax Map 90, Lot 4)

June 15, 2020 ZBA Meeting

Agenda Item 4.A

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The applicant has submitted testimony addressing the Section 801.2 Variance criteria in an application received by the Planning & Development Department on June 3, 2020 (see attached).

**STAFF COMMENTS**

If the applicant is proposing to construct a driveway with access to Ora Avenue (it is not clear from the application materials submitted), a Driveway Permit from the Department of Public Works will be required. The applicant has already applied for a building permit.

**Attachments**

cc: Adam Youngman (via e-mail)  
Sheena Youngman (via e-mail)  
File

\\Chfs1\sl\PLN\Development\_Review\Zoning Board Applications\2020 ZBA\_Applications\ZB2020-15-VAR\_8 Ora Ave\_090-004\_Youngman\Staff Memo.docx

# CITY OF LEBANON APPLICATION FOR

<b>SPECIAL EXCEPTION</b>	<input type="checkbox"/>	<input type="checkbox"/>	<b>SITE PLAN REVIEW</b>
<b>VARIANCE</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>SUBDIVISION</b>
<b>MOTION FOR REHEARING</b>	<input type="checkbox"/>	<input type="checkbox"/>	<b>LOT LINE ADJUSTMENT</b>
<b>APPEAL OF AN ADMIN. DECISION</b>	<input type="checkbox"/>	<input type="checkbox"/>	<b>OTHER (                      )</b>

<b>PROPERTY OWNER (APPLICANT):</b>			
NAME: Adam Youngman		TEL.#: 802-356-2327	
MAILING ADDRESS: 8 Ora ave, Lebanon , NH 03744			
E-MAIL ADDRESS: adam.youngman@icloud.com			
<b>CO-APPLICANT, AGENT, OR LESSEE:</b>			
NAME: Sheena Youngman		TEL.#: 802-356-0659	
MAILING ADDRESS: 8 Ora ave, Lebanon , NH 03744			
E-MAIL ADDRESS: sheena.youngman@yahoo.com			
<b>PROJECT LOCATION:</b>			
TAX MAP #:	LOT#: 90-4	PLOT #:	ZONE: R34
STREET ADDRESS OF PROJECT: Ora Ave			
IS THIS PROPERTY LOCATED IN THE: <b>WETLANDS</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <b>HISTORIC DISTRICT</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
<b>FLOOD PLAIN</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
<b>SCOPE OF PROJECT:</b>			
Location of Shed. <i>8' from side prop. line where 15' is required</i>			
<b>TYPE OF OCCUPANCY:</b>			
EXISTING <input checked="" type="checkbox"/> VACANT <input checked="" type="checkbox"/> ONE FAMILY <input type="checkbox"/> TWO FAMILY <input type="checkbox"/> MULTI-FAMILY <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> INDUSTRIAL PROPOSED <input type="checkbox"/> VACANT <input type="checkbox"/> ONE FAMILY <input type="checkbox"/> TWO FAMILY <input type="checkbox"/> MULTI-FAMILY <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> INDUSTRIAL			
IF USE IS <b>COMMERCIAL</b> OR <b>INDUSTRIAL</b> , PLEASE NOTE <b>SPECIFIC</b> USE: _____			
<b>SIGNATURE BLOCK:</b>			
Sheena Youngman		DATE: 5/28/2020	
PROPERTY OWNER			
<b>NOTE: IF, AS OWNER, YOU WISH TO DESIGNATE AN AGENT TO ACT ON YOUR BEHALF, PLEASE READ THE FOLLOWING AND SIGN BELOW:</b> I hereby designate the person listed above as my agent for the purpose of procuring the necessary local permits for the proposed work as described herein. Representations made by my agent may be accepted as though made by me personally, and I understand that I am bound by any official decision made on the basis of such representation.			
_____		DATE: _____	
PROPERTY OWNER			

DATE RECEIVED	FILE # (MAP/LOT)	APPLICATION #	FEE - \$ AMOUNT	DATE PAID	VOUCHER #
6/3/2020	90-4	2B2020-	209.30	6/3/2020	PR 177.15

*15-VAR*

*owe 512.15*

# SUPPORT STATEMENT FOR A VARIANCE

Amended as to comply with amended State statute and intent statement\*

## CITY OF LEBANON, NEW HAMPSHIRE

**Variance Standards: RSA 674:33 Effective Jan. 1, 2010**

**One** cover application with an abutters list, required filing fee and ten copies of the site plan (if larger than 8 ½ in. x 11in.) must accompany this support statement.

I (we) hereby request a variance from the terms of Article(s) 3  
Section(s) 310.3 of the Lebanon Zoning Ordinance.

**In order to grant a Variance, the Zoning Board of Adjustment must make affirmative findings of certain conditions. Those conditions are listed below:**

### 801.2 Variances.

A. To authorize, upon appeal in specific case, variances from the terms of this ordinance, no variance shall be granted unless each of the following conditions are met:

1. That the variance, if authorized, will not be contrary to the public interest;

correct. It is not contrary to the Public interest

2. That the variance will observe the spirit of the Ordinance.

It observes the spirit of the ordinance

3. That by the granting of the variance, substantial justice will be done;

yes

4. That the variance, if authorized, will not diminish the values of surrounding properties

It will raise value and;

5. That denial of the variance would result in unnecessary hardship.

(a) In this section "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property

yes

\_\_\_\_\_ ; and

(ii) The proposed use is a reasonable one

correct

(b) If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformity with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

in order to adhere with the ordinance, the shed would look completely out of place.

A variance shall expire if: (1) the use is not in place within two years of the date of issuance of a zoning permit or approval by the Zoning Board of Adjustment for a variance; or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a variance must be completed.

***\*This form was amended as to comply with an amended statute and intent statement (below) contained in Senate Bill #147.***

Statement of Intent:

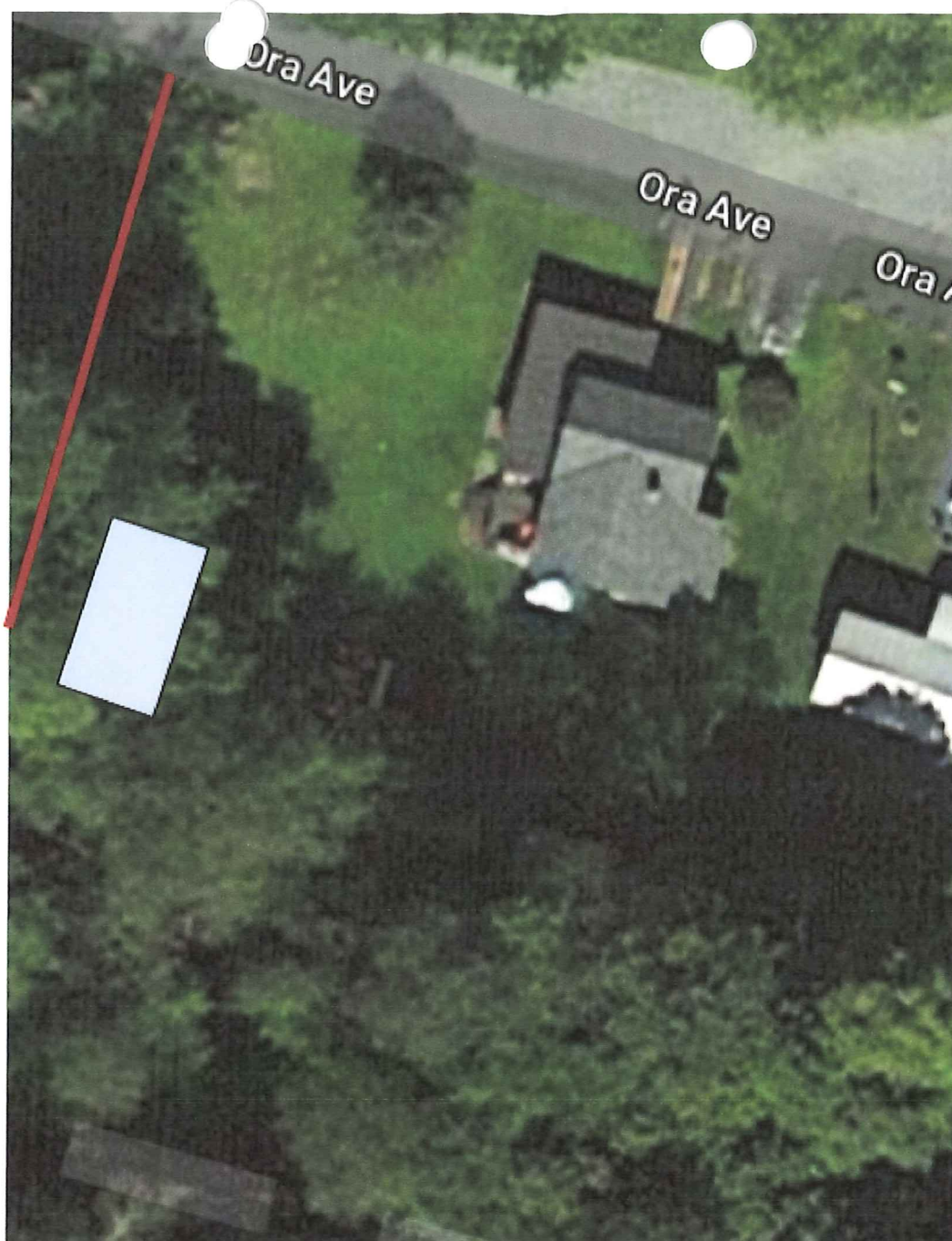
"The intent of [this statutory change] is to eliminate the separate 'unnecessary hardship' standard for 'area' variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by cases such as *Governor's Island Club, v. Town of Gilford*, 124 N.H. 126 (1983)."

Ora Ave

100(S)

90-4

Shed  
12 x 20



Google Earth Map  
Youngman Property Map for Shed Variance